rent for the next tranche of the remaining term of the lease. These cases considered one or more of the following: whether there was a formula for fixing the rent, what was the formula and who (the machinery) was to determine the rent, applying the formula. If there was a formula, but no machinery or the machinery had broken down (for whatever reason) the court would provide the machinery in order to give effect to the intention of the parties. If there was no formula provided, or the formula was unworkable, the consequence might be that the existing rent would continue or it be something else. However, in the case of *Thomas Bates*,[1] even counsel for the lessees found it impossible to argue that no rent was payable because the lessees could not agree with the lessors: see Buckley LJ at p 1083. In each of these cases, the commercial nature of the lease was relevant in ascertaining the intention of the parties.

The lease in the present case may be said to be a commercial lease. But it is a short term lease, unlike the leases in the English cases. The option to renew in the lease is not simply an option to have the rent fixed for an existing term. It is merely an option to accept a new lease on a new rent to be determined by the defendants. The rent has to be agreed for each new term that the tenant may require. It is an essential term of any new lease. Therefore the present action is not concerned with a rent review clause simpliciter but with a lease renewal clause. Clause 4(6) is an agreement to agree to a new lease at a rent to be agreed between the parties. The established principle in such a situation is that if there is no agreement on what is to be agreed, there is no obligation on the part of the landlords to grant a new lease or an obligation on the part of the tenant to accept it. The rule applied by the House of Lords in *May & Butcher Ltd* v *The King (Note)*[7] has not been overruled and is still good law.

The alternative ground given by Buckley LJ in the *Thomas Bates* case[1] (which was not expressly adopted by the other members of the court) has to be understood in the context of that case. The court had to determine how the rent for the next period should be determined and not whether there was a next period. All the cases cited by counsel for the plaintiff are concerned with that type of question. Furthermore, Buckley LJ's alternative ground was not based on any principle but on the construction of the particular clause. He expressly said that his construction was reached by a process of implication.

In the present case, cl 4(6) says that the new term shall 'be for ... three years ... at a revised rent to be determined by the landlord. ...' The defendants have determined the revised rent. There is nothing in those words which give rise to any implication that the rent must be reasonable or that it is the market rent or that it is to be determined by someone else. The fact that the lease is of a commercial nature does not imply that the revised rent should be the market rent or any other reasonable rent. Clause 4(6) goes on to say that if 'the revised rent..[is] not acceptable to the tenant and/or if the tenant shall fail to sign the lease ... then this option shall lapse ...' These words are clear beyond doubt. The plaintiffs have not accepted the revised rent and have not signed the lease. There is nothing more to be said for the plaintiffs. I must give effect to the clear meaning of cl 4(6).

Accordingly, the answer to question 1(a) of this summons is 'no'. The plaintiffs will pay the costs of the defendants in this application.

Application dismissed.

Solicitors: *Wee Ramayah & Partners; Lim Hua Yong.*

Reported by *Teoh Ai Lin*

Wright v Times Business Publications Ltd & Anor

HIGH COURT (SINGAPORE) — SUIT NO 98 OF 1988
KARTHIGESU J
25 JANUARY 1991

Civil Procedure — Summons for directions — Discovery — Relevancy of documents — Application refused in related proceedings — Relevancy tested by pleadings — Related better further and better particulars of defence — Interrogatories — Rules of the Supreme Court 1970, O 24 rr 3 & 7

Tort — Defamation — Defences — Denial — Qualified privilege and justification

Words and Phrases — 'Unfounded'

In 1987, *Business Times* ('BT') published articles regarding OCBC's attempts to recruit four top bankers and methods of recruiting executives. Norman Wright ('NW') subsequently in a letter addressed to the editor of BT, responded to the aforementioned articles and concluded that 'there is a prima facie case of amateurism or carelessness of OCBC to have allowed such a breach of confidentiality to happen'. OCBC contended that the words were libellous and demanded an apology. BT printed an unreserved apology that NW's allegations were 'unfounded'. NW refused to apologize and OCBC commenced proceedings against NW ('1987 proceedings'). NW alleged that the words in the apology were libellous and meant that NW had made statements which were wholly unfounded and without basis and by innuendo that he was 'irresponsible, reckless and given to making statements which are wholly unfounded and without any basis'. OCBC refused to apologize and NW commenced these proceedings against OCBC and BT ('1988 proceedings'). OCBC's defences were that the words complained of could not bear the meanings claimed by NW, qualified privilege and justification.

NW requested for further and better particulars of OCBC's defence and discovery of all correspondence and memoranda of discussion, relating to the BT article and the persons named,

and OCBC's recruitment procedure and directives on maintaining confidentiality.

A similar application made by NW in the 1987 proceedings where he raised defences denying defamation and fair comment, had been refused. The assistant registrar in the 1988 proceedings allowed discovery of particular classes of documents. OCBC appealed against the assistant registrar's order on the grounds that:

(1) the specified class of documents were not relevant to the 1988 proceedings based on the issue raised by the pleadings and particulars;
(2) to allow discovery was tantamount to allowing NW to circumvent the refusal of the court to allow a similar application in the 1987 proceedings.

OCBC alleged that 'the sting' which OCBC seeks to justify and rely on to support the charge of recklessness/irresponsibility/mischievousness is NW's failure to make checks.

NW's application for:

(1) better further and better particulars of OCBC's defence of justification covering the same grounds as those that could be covered by the documents named in the request for discovery; and
(2) interrogatories regarding the drafting of, the investigation into the truth of the allegation, and OCBC's knowledge regarding communication between BT and NW regarding the apology

also were before the court.

Held, allowing OCBC's appeal and NW's application (in part):

(1) Whether discovery of the documents should be ordered depends on the issues raised by the pleadings and particulars supplied and the relevance of the documents towards proving or disproving those issues.

(2) The issue arising from OCBC's plea of justification is whether NW was reckless, irresponsible or mischievous in not having checked out the conclusion he made in his letter to BT. Had NW pleaded justification in the 1987 proceedings, the truth or falsity of these allegations would be relevant. As such, the documents requested for were not relevant.

(3) The word 'unfounded' is capable of many different meanings. In the context of these proceedings, the word means 'groundless'. It cannot be a libel to say that what another has said is unfounded. The statement is nothing but a bare denial.

(4) Since the appeal in respect of the 1987 proceedings was pending and a similar application had been refused in the 1987 proceedings, even if the documents were relevant to the 1988 proceedings, it was not desirable to grant the application for discovery due to the close connection between the 1987 and 1988 proceedings. Although there is an implied undertaking not to use the information obtained from the documents obtained in the 1988 proceedings, there is always the risk that some information may be unwittingly used in the 1987 proceedings.

(5) As the better further and better particulars sought were in reality in the nature of interrogatories and they covered the same grounds as the documents in the application for discovery would have covered, the request for better further and better particulars must be similarly refused. The court will not order particulars of evidence.

(6) Interrogatories pertaining to OCBC's knowledge regarding absence of: (a) BT's investigation into the truth of allegations in the apology; and (b) communications between NW and BT regarding the apology, were allowed against OCBC.

[*Editorial Note:* The respondent/plaintiff has appealed to the Court of Appeal vide Civil Appeal No 27 of 1991.]

Cases referred to

1 *OCBC* v *Norman Wright & Ors* [1989] 3 MLJ 73 (refd)
2 *Compagnie Financiere Et Commerciale Du Pacifique* v *Peruvian Guano Co* (1882) 11 QBD 55 (folld)
3 *Alterskye* v *Scott* [1948] 1 All ER 469 (refd)
4 *Crest Homes plc* v *Marks & Ors* [1987] 2 All ER 1074 (refd)

Legislation referred to

Rules of the Supreme Court 1970 O 24 rr 7(1), 8
Rules of Supreme Court 1875 [UK] O XXX1 r 12

Charles Gray QC (*Gill Sarjit Singh* with him) for the appellants/second defendants.
Patrick Milmo QC (*Tan Woon Tiang* with him) for the respondent/plaintiff.

Cur Adv Vult

Karthigesu J: This is an appeal against the order of an assistant registrar made on 4 October 1989 ordering the second defendants, whom I shall refer to hereafter as 'OCBC', to make discovery of the following particular classes of documents:

(a) Documents evidencing or referring to OCBC's endeavours in and around November 1987 to recruit four top-ranking bankers including (but not necessarily limited to):
  (i) all memoranda and circulars distributed within OCBC;
  (ii) letters written to, or received from, potential recruits.
(b) All letters written to, or received from the persons named in the *Business Times* article of 17 November 1987 (including letters of offer, letters of acceptance and contracts of employment), both before and after the publication of the said article, and all records of conversations or interviews with such person prior to the official announcement of their appointment (in so far as such documents are not disclosed under (a)(i) above).
(c) OCBC's corporate procedure manual, policy and procedure manual or any other memoranda, circulars or notices relating to the process of hiring senior executives and handling and securing of personnel files.
(d) All internal memoranda and letters (in so far as not disclosed under a(i) or (c) above) concerning the selection of the persons named as aforesaid for appointment in or after November 1987 to positions within OCBC.
(e) Notes, or other record, of the conversation between:
  (i) Alvin Tay and David Cheam on 16 November 1987;

(iii) David Cheam and Alvin Tay on 27 November 1987.

(f) All documents, whether they be letters, memoranda, notices or circulars, setting out or including instructions to OCBC's staff regarding the disclosure or non-disclosure of the names of persons who have been, or might be appointed, to positions within OCBC, both generally and in relation to the four persons named as aforesaid.

(g) All letters sent or received by OCBC and all internal memoranda, circulars and notices in response to or concerning:

(i) Alvin Tay's article in *Business Times* of 17 November 1987;

(ii) the plaintiff's (whom I shall refer to hereafter as 'Norman Wright') letter published in *Business Times* of 28 November 1987.

To understand the ramifications of this order and the postures taken by these two protagonists in respect thereof I shall have to refer extensively to an earlier action, Suit No 3190 of 1987, in which OCBC were the plaintiffs and Norman Wright, one of the defendants, as well as to what gave rise to those proceedings. I shall also have to refer quite extensively to the interlocutory applications made by Norman Wright in those proceedings for discovery and for leave to issue certain interrogatories to OCBC. I shall refer to Suit No 3190 of 1987 as 'the 1987 proceedings'.

Norman Wright is a senior executive of an executive search firm. OCBC are bankers carrying on business in Singapore and elsewhere.

The background

On 17 November 1987 *Business Times* published a story by Alvin Tay, its banking correspondent, entitled 'OCBC plans to recruit four top-ranking bankers'. The story was printed under the photographs of four well-known banking personalities in Singapore. The caption under the four photographs read 'On OCBC's wanted list ... (from left) Mrs Elizabeth Sam, Mr Ng Tat Pun, Mr Lai Teck Poh and Mr Goh Chee Hiong'.

The first and third paragraphs of the story read:

> The Oversea-Chinese Banking Corporation is eyeing four top-ranking bankers, including former central banker Mrs Elizabeth Sam, in what promises to be the biggest recruitment drive of high calibre staff in the bank's history.

and

> Official confirmation from OCBC was not available yesterday, but BT understands that Mr Ng is receptive to the bank's offer. The status of the other individuals is not clear.

Alvin Tay's story was followed by an article on 'Executive search and recruiting alternatives' published in the *Business Times* on 23 November 1987. No reference was made to this article at the hearing and I was not apprised of its contents. However, Norman Wright was disposed to respond to this article and did so in a letter to the editor of the *Business Times* which he entitled 'Searching for executives' and sub-titled 'Need to maintain confidentiality'. *Business Times* published Norman Wright's letter in their weekend issue of the 28-29 November 1987.

Norman Wright, it is evident from his letter, addressed himself to clarifying several points in the article and to illustrate the point he sought to make on 'confidentiality', concluded his letter as follows:

> A case of how not to go about attracting top executives was demonstrated in the front page article which appeared in your 17 Nov issue regarding OCBC's reported plans to hire four named senior banking officials. Professional executive search firms will recoil in horror at such publicity.
>
> Your reporter has met his professional duty to 'find and report the news' but there is a prima facie case of rank amateurism or carelessness of OCBC to have allowed such a breach of confidentiality to happen. I doubt that a professional executive search firm would have been involved.
>
> It shows clearly how difficult it is for an organization to maintain confidentiality when it conducts its own search. The leakage is potentially damaging to those named, at the very least embarrassing, and the effect on the morale of their present staff and, indeed on that of the staff at OCBC, must be unfortunate.

OCBC, contending that the words of Norman Wright's letter set out above were libellous, then commenced the 1987 proceedings against Norman Wright and the companies he was associated with on 12 December 1987. No action was taken against the *Business Times*. The reason for this will become clear in a moment.

OCBC's complaint against both Norman Wright and the *Business Times* was that it was implicit in the said words which in their ordinary meaning meant and were intended to mean:

(a) that OCBC have caused or permitted a breach of confidence to take place in relation to their intended hiring of the four senior bankers, whereby certain embarrassment and potential damage have been caused to those concerned; and/or

(b) that OCBC had either deliberately or through ignorance or carelessness broken an express or implied promise of confidentiality to the four bankers they were seeking to hire and so subject them to difficulties vis-a-vis their present employers; and/or

(c) that OCBC were not able to keep confidential, matters or information which by their nature should be kept confidential.

OCBC by letters dated 3 December 1987 demanded from both Norman Wright and the *Business Times* that a full and complete withdrawal and apology in a form and on terms to be approved by OCBC's lawyers on behalf of OCBC be published in one issue of the *Busi-*

ness Times in as prominent a position as the letter complained of.

Norman Wright's solicitors responded on 4 December 1987 contending that their client's 'comments in the letter' could not constitute a libel upon OCBC. It was further contended that the statements complained of were 'quite clearly on its face a mere expression of opinion in respect of the issue of executive search only' and that no aspersions were cast on OCBC's integrity or ability as bankers. The solicitors' letter finally said, 'Your clients' plan to recruit senior executives had already been reported in an earlier edition of the *Business Times*. Our client was merely commenting on facts and matters already reported in the newspapers'. It was hoped that the matter would end there. In the event, no apology was forthcoming from Norman Wright.

On the other hand the *Business Times*, through their solicitors on 4 December 1987 following an earlier telephone conversation between the respective solicitors, immediately came forward with an apology which would be published the next day, Saturday, 5 December. The proposed apology was in these terms:

> In the *Business Times* of the 28 November 1987 we published a letter written to the editor by Mr Norman Wright, managing partner of Egon Zehnder International South-east Asia.
>
> The Oversea-Chinese Banking Corporation have written to us stating that certain paragraphs of Mr Wright's letter constitute a libel. Whilst our policy is to publish letters to the editor in as complete a form as is possible this does not imply that we accept the contents of any letter we so publish nor do we in any way associate ourselves with any such letter.
>
> We express our regret to the Oversea-Chinese Banking Corporation and apologize to them for any embarrassment or inconvenience which may have been caused to them.

On the same day OCBC's solicitors informed the solicitors for the *Business Times* that OCBC would be agreeable to abandoning their claim for compensation provided the *Business Times* agreed to publish an unreserved apology exactly in the form of the draft which was enclosed. The unreserved apology read as follows:

> In the 28 November 1987 issue of the *Business Times* we published a letter of Mr Norman Wright, managing partner of Egon Zehnder International South-east Asia, titled 'Searching for Executives' and subtitled 'Need to Maintain Confidentiality'.
>
> *Business Times* is satisfied and accepts that the statements concerning the Oversea-Chinese Banking Corporation Ltd in the said letter were and are wholly unfounded. We know of no carelessness or failing on the part of Oversea-Chinese Banking Corporation Ltd to have allowed any breach of confidentiality to happen and we accept that we know of no basis or foundation whatsoever for the statements.
>
> *Business Times* is glad to take this earlier opportunity of expressing to the Oversea-Chinese Banking Corporation Ltd its unreserved regrets for any distress, inconvenience or embarrassment caused to them by the said statements.

The solicitors for the *Business Times* agreed to publish the unreserved apology in those very terms and it was so published in the *Business Times* weekend issue of 5-6 December 1987.

Thus, as stated earlier, OCBC commenced the 1987 proceedings on 12 December 1987 against Norman Wright and the companies he was associated with but not against the *Business Times*.

Norman Wright did not take objection to the unreserved apology until 29 December 1987 when through his solicitors he complained:

> The said words meant and/or were understood to mean that our client had made statements that were wholly unfounded and which were without any basis whatsoever.
>
> Further, by way of innuendo, the said words meant and were understood to mean that our client had been irresponsible, reckless and given to making statements that are wholly unfounded and without any basis.

OCBC refused to apologize, maintaining that Norman Wright's letter was defamatory of them and thus they were entitled to an unqualified apology. Accordingly Norman Wright commenced these proceedings against the *Business Times* and OCBC on 16 January 1988. I shall refer to these proceedings as 'the 1988 proceedings'.

It will be seen from the background facts I have set out that the 1988 proceedings are inextricably intertwined with the 1987 proceedings. In my view any application for discovery, or for that matter any interlocutory application, in respect of the 1988 proceedings cannot be dealt with in isolation of what gave rise to the 1987 proceedings and to the 1987 proceedings itself. This is how Mr Gray, counsel for OCBC, sought to argue the appeal. I agree. The unreserved apology would never have come to be written and published were it not for the alleged libel contained in Norman Wright's letter published in the *Business Times* weekend issue of 28-29 November 1987. Furthermore both Norman Wright's letter and the unreserved apology were published before OCBC commenced the 1987 proceedings.

The 1987 proceedings

I have already set out the substance of OCBC's complaint against Norman Wright and that was how OCBC formulated its claim in the 1987 proceedings. Norman Wright's defence was a denial that the words complained of were defamatory of OCBC. In the alternative, that those words were a fair comment on a matter of public interest, that is to say, of the methods of recruitment of senior executive officers by a major banking corporation and preserving confidentiality. The defence of justification was not pleaded.

Particulars of the facts and matters on which the defence of fair comment was based were pleaded and pursuant to an order of court further and better particulars were given. I do not think it is necessary for me to deal with them in detail for present purposes. Suffice it to say that the particulars in the main dealt with what an executive search firm would do in searching for and selecting senior executives for recruitment by its clients and what steps it would take to maintain confidence in relation to the identities of its clients and the selected executives so as to ensure that there was no premature public disclosure.

Norman Wright had also alleged in the particulars on which he based his defence of fair comment that OCBC had failed or neglected to take any sufficient steps to ensure that there was no premature disclosure of the names of the four bankers. The further and better particulars he gave pursuant to the order of court, were that OCBC had failed or neglected to take one or more of the 22 steps an executive search firm would take (*mutatis mutandis*). He was unable to be any more 'precise' than that. It is clear that Norman Wright was unable to point to any act or omission on the part of OCBC which amounted to causing or permitting a breach of confidence to take place.

In their reply, OCBC maintained that Norman Wright was actuated by malice. In the particulars given OCBC alleged, inter alia, that Norman Wright had failed or neglected to check with them or at all the truth of his assertions before publication and that he had no reason to suppose they were true. Further, OCBC alleged that Norman Wright's object in commencing the 1988 proceedings was to discourage OCBC from pursuing the 1987 proceedings.

I have made reference to the reply only to demonstrate how inextricably the 1988 proceedings were and are intertwined with the 1987 proceedings.

In due course and following a summons for directions order the parties served on each other a list of documents. Norman Wright complained that OCBC's list of documents omitted documents which ought to be included and by a letter dated 2 November 1988 requested that OCBC file a further and better list which should include documents of the particular classes identical to the order the assistant registrar made in the 1988 proceedings on 4 October 1989 and which I have set out at the beginning of this judgment.

When OCBC refused to file a further and better list of documents, Norman Wright made an application under RSC O 24 r 3 for an order that OCBC disclose the particular classes of documents referred to above but the assistant registrar who heard that application made a restricted order confining discovery to the documents which formed the foundation of the two press releases attached to the two letters from OCBC to the *Business Times* dated 11 December 1987 and 29 December 1987. Both OCBC and Norman Wright appealed. Judicial commissioner Chao Hick Tin (as he then was) who heard the appeal allowed OCBC's appeal and dismissed Norman Wright's. (See *OCBC* v *Norman Wright & Ors.*[1])

Norman Wright has now appealed against the judgment of Chao Hick Tin JC.

The 1988 proceedings

Norman Wright's case as pleaded in so far as it is relevant for the purposes of this appeal is contained in para 6 of the statement of claim. It is as follows:

> In their natural and ordinary and/or inferential meaning, the said words meant and were meant to mean that the plaintiff (Norman Wright) as a senior executive of an executive search firm had recklessly, irresponsibly and mischievously written a letter for publication in an influential newspaper which contained wholly unfounded and indefensible libellous statements about a major banking corporation the publication of which had caused the bank inconvenience, embarrassment and distress, calling for an abject public apology from the newspaper, and had thus shown himself to be unreliable, unsound, lacking in judgment and unfit to occupy a senior executive position in an executive search or any other firm.

OCBC's defence is, firstly, a denial that the words complained of bore or were understood to bear or are capable of bearing any of the meanings imputed to them in para 6 of the statement of claim; secondly, that the words complained of were published on an occasion protected by qualified privilege and thirdly, justification framed as follows:

> In the further alternative the said words were in their natural and ordinary meaning true in substance and in fact.
>
> *Particulars*
>
> (a) The letter written by the plaintiff (Norman Wright) to the *Business Times* asserted, contrary to the fact,
>
> (i) that the second defendants (OCBC) had caused or permitted a breach of confidence to take place in relation to their intended hiring of four senior bankers named in the issue of the said newspaper for 17 November 1987 and that embarrassment and damage had thereby been caused to them; and/or
>
> (ii) that the plaintiffs (obviously OCBC) had either deliberately or through ignorance or carelessness broken an express or implied promise of confidentiality to the four bankers they were seeking to hire and so subject them to difficulties vis-a-vis their present employers; and/or
>
> (iii) that the plaintiffs (again obviously OCBC) were not able to keep confidential matters or information which by their nature should be kept confidential.
>
> (b) Before writing his said letter the plaintiff (Norman Wright) did not check the truth of the said assertions either with the second defendants (OCBC) or at all.

(c) Accordingly, the plaintiff (Norman Wright) did write a letter containing wholly unfounded statements about a major banking corporation and the publication of the said assertions in the said newspaper did cause the second defendants (OCBC) inconvenience, embarrassment and distress.

I must pause here to draw attention to the obvious errors in OCBC's particulars (a)(ii) and (iii) which were not detected by either counsel or by me during the hearing notwithstanding the several references made to them in argument. Particulars a(i), (ii) and (iii) are simply a transposition of OCBC's pleaded case against Norman Wright in the 1987 proceedings, once again demonstrating how inextricably the two proceedings are intertwined.

Norman Wright sought further and better particulars of OCBC's defence which OCBC furnished on 17 March 1988. However, Norman Wright not being satisfied with them has applied by the summons for directions application for better, further and better particulars than those furnished. This item of the summons for directions together with two other items were reserved to be heard together with this appeal. It is appropriate that I set out the request and the answers here, although I shall deal with that question separately later, as the reasons for resisting the still better particulars, Mr Gray contends, are the same for resisting discovery of the particular classes of documents requested for.

The request for further and better particulars and the answers are:

Under paragraph 7(a)

Of the allegation that the assertions in the plaintiff's (Norman Wright's) letter to *Business Times* were 'contrary to fact'

1(a) State whether it is the second defendants' (OCBC's) case that
(1) neither they, nor any servant or agent, disclosed or caused or permitted the disclosure of the names of the four senior bankers they intended to hire, or
(2) they or their servant or agent did disclose the said names, but such disclosure was not deliberate or the result of ignorance or carelessness, or
(3) they, or their servant or agent did disclose the said names, but such disclosure was not in breach of confidence.

1(b) If the answer to 1(a) is (2) or (3), state when, by whom in OCBC and to whom was such disclosure made and whether orally or in writing.

1(c) If the answer to 1(a) is (3) state whether it is the second defendants' (OCBC's) case that there was no breach of confidence,
(1) because there was no promise of confidence to any of the said senior bankers, or
(2) because the circumstances did not give rise to any duty of confidence on the part of the second defendants (OCBC), or
(3) because the said senior bankers had consented to disclosure of their names.

If the last is alleged, state in respect of each person whether such consent was given orally or in writing: if orally state when, where and to whom and set out the substance of what was said; if in writing, identify the material documents.

Answer

The second defendants' (OCBC's) case as already pleaded is that the plaintiff's (Norman Wright's) letter to the *Business Times* was wrong to allege that the second defendants (OCBC) had caused or permitted a breach of confidence to take place in relation to their intended hiring of the four senior bankers. Save as aforesaid the plaintiff (Norman Wright) is not entitled to these particulars.

Under paragraph 7(c)

Of the allegation that 'the said assertions in the said newspaper did cause the second defendants (OCBC) inconvenience, embarrassment and distress' give full particulars thereof.

Answer

The second defendants' (OCBC's) case is sufficiently pleaded in their defence.

To complete the pleadings in the 1988 proceedings I should refer briefly to the reply filed by Norman Wright. The principal aspect of the reply is the assertion that OCBC were actuated by 'express malice' in having published or having caused the publication of the unreserved apology. Particulars and further and better particulars of the assertion of 'express malice' were given to which I shall refer later.

On discovery, OCBC's list of documents was virtually the same as that in the 1987 proceedings and as in the 1987 proceedings, Norman Wright requested the discovery of the same particular classes of documents as in the 1987 proceedings. When it was not forthcoming he made an application for a further and better list pursuant to O 24 r 3 and for the particular classes of documents under O 24 r 7. The assistant registrar who heard the application refused the application for a further and better list but made the order for the particular classes of documents in the terms set out at the beginning of this judgment. He also granted a stay of the order.

The appeal

The relevant rules of the Supreme Court applicable to this appeal are O 24 rr 7(1) and 8 which provide as follows:

Order 24 rule 7(1)

Subject to rule 8, the court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or

any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

Order 24 rule 8

On the hearing of an application for an order under rule 3 or 7 the court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

These rules are identical with the English rules O 24 rr 7(1) and 8 except that the English O 24 r 8 applies also to discovery before commencement of proceedings.

The principles underlying discovery were enunciated as long ago as 1882 by Brett LJ in *The Compagnie Financiere Et Commerciale Du Pacifique* v *The Peruvian Guano Company*.[2] They are as applicable today as they were then under the relevant English Rules of Supreme Court 1875, O XXX1 r 12. At pp 62-63 of the report Brett LJ stated the principle as follows:

The doctrine seems to me to go further than that and to go as far as the principle I am about to lay down. It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may — not which must — either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put the words 'either directly or indirectly' because, it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry, which may have either of these two consequences.

Both sides have relied heavily on this oft quoted passage; OCBC to show that the specified class of documents must be relevant to the issue raised by the plea of justification and the particulars relied upon, by placing emphasis on the phrase 'it is reasonable to suppose' and Norman Wright by suggesting that any document or class of documents which will show or lead to a train of inquiry which will show the truth or falsity of whether OCBC had caused or permitted a breach of confidence or had either deliberately or through ignorance or carelessness broken any promise of confidentiality to the four bankers or were not able to keep confidential, matters or information which should be kept confidential, would be relevant, since these were the real issues raised by the plea of justification and the particulars relied upon and not that he, Norman Wright, did not check the truth of the assertions he had made as contended by OCBC.

As is to be expected, both sides are in serious contention as to what is the real issue raised by OCBC's plea of justification and the particulars relied upon.

I will now deal with this question. Mr Gray submits that the 'sting' of the libel of which Norman Wright complains is that he was reckless, irresponsible and mischievous because he wrote a letter containing unfounded allegations about OCBC. The 'sting' it is submitted is the suggestion of recklessness/irresponsibility/mischievousness, not the fact that in his letter Norman Wright got his facts wrong since that is not of itself defamatory. It is that 'sting' which OCBC seeks to justify and what they rely on to support the charge of recklessness/irresponsibility/mischievousness is the failure of Norman Wright to make any checks. Paragraph (b) of the particulars which reads 'Before writing his letter the plaintiff (Norman Wright) did not check the truth of the said assertions either with the second defendants (OCBC) or at all' is the nub of the plea of justification. I have set out the full text of the plea of justification and the particulars relied upon under the subheading 'The 1988 proceedings'. Mr Gray further submitted that paras (a)(i), (ii) and (iii) of the particulars are preliminary averments and para (c) the conclusion or a rounding-up.

On the other hand Mr Milmo, counsel for Norman Wright, contends that by alleging in the particulars of justification that the assertions made by Norman Wright were 'contrary to the fact' which must mean false or untrue OCBC have put in issue and have taken upon themselves the burden of proving that it was untrue

- that OCBC had caused or permitted a breach of confidence;
- that OCBC had either deliberately or through ignorance or carelessness broken any promise of confidentiality to the four bankers; and
- that OCBC, were not able to keep confidential, matters or information which should be kept confidential.

He further submitted that the core of the plea of justification was in paras (a) and (c) of the particulars and not in para (b) which was an afterthought.

In my view it is crucial to the question of discovery in this appeal to determine the real issue raised by the plea of justification and the particulars relied upon as, if Mr Gray is right Norman Wright would not be entitled to discovery of the classes of documents requested for, they being all internal documents belonging to OCBC of which he had no knowledge when he wrote his letter to the *Business Times* and accordingly not relevant.

The words of the unreserved apology (set out in full under the sub-heading 'The background') which gave rise to Norman Wright's complaint are to be found in the second paragraph and read:

Business Times is satisfied and accepts that the statements concerning the Oversea-Chinese Banking Corporation Ltd in the said letter were and are *wholly unfounded*. (Emphasis added.)

The remainder of that paragraph is an expression of belief and the third paragraph is the apology for the alleged consequence of these words.

The substance of Norman Wright's complaint is that these words meant that he 'had recklessly' irresponsibly and mischievously written a letter for publication in an influential newspaper which contained *wholly unfounded* and indefensible libellous statements ...' (Emphasis added.) See para 6 of his statement of claim which I have set out in full under the sub-heading 'The 1988 proceedings'.

The word 'unfounded' is capable of many different shades of meaning. It can mean baseless, fabricated, false, groundless, idle, spurious, trumped-up, unjustified, unproven, unsubstantiated, vain, without basis, without foundation or not yet founded or established. In what sense it was used in the unreserved apology is for the trial judge. Be that as it may it cannot be denied that the unreserved apology relates directly to Norman Wright's letter, the subject matter of the 1987 proceedings. In my view it is not open to dispute that the letter, or at least that part of that letter to which OCBC objects was a comment on a newspaper story and not on any facts stated by him.

Norman Wright as much as concedes this. See his solicitors' letter dated 4 December 1987 to which I have referred earlier in this judgment under the sub-heading 'The background', and his defence in the 1987 proceedings of fair comment but not of justification.

Clearly the 'sting' of the libel, if any, is in failing to check out the story, that is to say, being reckless, irresponsible and mischievous before making statements albeit comments of a leak or breach of confidentiality and in my view it is in that sense that the statements are unfounded or to use another meaning of that word, groundless. I agree with Mr Gray that it cannot be a libel to say what another has said is unfounded. It is tantamount to a bare denial but it cannot put in issue the truth or falsity of what was said.

The question, however, remains whether by pleading by way of particulars that Norman Wright's letter to the *Business Times* was 'contrary to the fact' OCBC have put in issue and have taken upon themselves the burden of proving what they themselves have alleged to be the 'sting' of the libel in the 1987 proceedings to be untrue. I think not.

The formulation of the particulars of justification, as I have already observed, repeats what OCBC have alleged is the 'sting' of the libel uttered by Norman Wright and Norman Wright has not sought to justify what he has said in the 1987 proceedings. In formulating the particulars in this way in the 1988 proceedings, OCBC cannot be said to have taken upon themselves to prove what they would not have to prove in the 1987 proceedings. The law presumes in the plaintiff's favour that the defamatory words are false. See para 351 of *Gatley on Libel and Slander* (8th Ed). If it is said, as in fact it is said, by Norman Wright that this is just what they have done by the use of words 'contrary to the fact' I hold that the words 'contrary to the fact' are otiose. Paragraph (a) of the particulars, in my view, makes the same good sense with or without the words 'contrary to the fact'. Unmistakenly paras 1(a)(i), (ii) and (iii) are preliminary averments and were no doubt intended to draw attention to the fact that the plea of justification in the 1988 proceedings relate directly to OCBC's case in the 1987 proceedings.

I also do not agree with Mr Milmo that para (b) of the particulars is an afterthought. I agree with Mr Gray that it is the nub of the plea of justification. OCBC's allegation that Norman Wright had failed or neglected to check the truth of his assertions was first made by OCBC in their reply filed in the 1987 proceedings on 30 January 1988 whereas their defence in the 1988 proceedings was filed on 15 February 1988. Although OCBC's reply in the 1987 proceedings was amended and re-filed on 10 September 1988 it does not seem to me that the allegation of failure to check was not made in the reply originally filed on 30 January 1988. Even if it were not so I cannot see how particulars 1(a)(i), (ii) and (iii) can be anything but preliminary averments.

The conclusion I have reached on the issue arising from the plea of justification and the particulars relied upon by OCBC is whether Norman Wright was reckless, irresponsible or mischievous in not having checked out the assertions he made in his letter to the *Business Times* and published it in its weekend issue of 28-29 November 1987 and not whether those assertions were true or false. The truth or falsity of those assertions would have fallen to be decided in the 1987 proceedings had Norman Wright pleaded justification as a defence which he has not.

Accordingly the classes of documents of which Norman Wright has got discovery by the order of the assistant registrar dated 4 October 1988 have no bearing whatsoever on what I have found to be the true issue in the 1988 proceedings and are therefore totally irrelevant.

An examination of the classes of documents all of which relate to the recruiting procedures adopted by OCBC and their internal procedures both generally and specifically to the four named bankers in question for maintaining confidentiality are not only irrelevant but also unnecessary either for disposing fairly of the cause or matter of for saving costs (O 24 r 8) in view of my finding on the issue raised by OCBC's plea of justification and the particulars relied upon. I find it difficult to imagine how an examination of these classes of documents can lead one to reasonably suppose that they

might contain information which may fairly lead to a train of inquiry to damage OCBC's plea of justification that Norman Wright failed or neglected to check out his assertions before making them. The rule is stated in 13 *Halsbury's Laws* (4th Ed) para 38 as follows:

> Relevance must be tested by the pleadings and particulars and when particulars have been served which limit a particular issue the discovery on that issue is limited to the matter raised in the particulars.

The extreme width and lack of specificity of the classes of documents in question led Mr Gray to submit that Norman Wright had little idea of what went on in OCBC and was therefore embarking on a 'fishing expedition' in the hope of 'trawling' through a volume of unnecessary and irrelevant documents hoping that he would make good his assertions of breach of confidentiality on the part of OCBC, either deliberately or through ignorance or carelessness or being unable to keep confidential, matters which ought to be kept confidential. I cannot but agree.

A further argument advanced by Mr Gray was that to allow Norman Wright to have the discovery he had succeeded in getting was to permit him to circumvent the order of Chao Hick Tin JC in the 1987 proceedings. He conceded, however, that I would have to grapple with this question only in the event that I hold that the classes of documents in question were relevant to the issue of justification in the 1988 proceedings.

Having reached the conclusions I have, I do not feel it necessary to grapple with this question or to deal with the numerous authorities that were cited to me on this point. However, since both counsel spent much time on this point I proceed to make some observations on the arguments.

The substance of Mr Gray's submission was that even if Norman Wright was entitled to discovery of the particular classes of documents in question, discovery should be denied as the irresistible inference was that Norman Wright's underlying motive was to provide him with a defence in the 1987 proceedings. He pointed out that the close similarity between the classes of documents sought in the 1988 proceedings and those sought in the 1987 proceedings bore this out. In fact, for all practical purposes they are identical. He further submitted that it was difficult to believe that Norman Wright would have started the 1988 proceedings at all, were it not his desire to achieve a collateral advantage in the 1987 proceedings.

Mr Milmo strongly resented these allegations of an ulterior motive which he submitted was mere conjecture on the part of Mr Gray. His submission was that if the particular classes of documents of which discovery was sought in the 1988 proceedings were relevant then it was irrelevant that similar discovery was refused in the 1987 proceedings. Furthermore there was an implied undertaking that documents obtained in one case would not be used in another case. The court could always protect the party giving discovery by withholding production or inspection to a later date as suggested by Jenkins J in *Alterskye* v *Scott*[3] at p 471 which I was urged to follow. Jenkins J said:

> It seems to me, however, that in the further and better affidavit of documents which I now propose to order it will be open to the defendant, if so advised, to say, with respect to particular documents or a particular class of documents, that those documents are, for this or that reason, especially confidential and that he objects to producing them except on an undertaking by the plaintiff in whatever form the defendant conceives would be adequate for his protection. If, on that, the parties cannot agree as to the form of the undertaking, then the matter can come before the court as a question concerning the terms, if any, which ought to be imposed on the plaintiffs as a condition of having production of those particular documents.

I have already drawn attention to the extreme close connection between the 1987 proceedings and the 1988 proceedings and whilst I would not go so far as to say that Norman Wright's application in the 1988 proceedings were motivated wholly by an unworthy purpose it would not, in my view, be desirable in the circumstances of this case to allow discovery of the very classes of documents which were refused in the 1987 proceedings whilst the appeal in those proceedings was still pending, even if I had found that they were relevant to the 1988 proceedings. In coming to this conclusion I was guided by the words of Lord Oliver of Aylmerton who delivered the main speech in the House of Lords in *Crest Homes plc* v *Marks & Ors*[4] at p 1078:

> It is clearly established and has recently been affirmed in this House that a solicitor who, in the course of discovery in an action, obtains possession of copies of documents belonging to his client's adversary gives an implied undertaking to the court not to use that material nor to allow it to be used for any purpose other than the proper conduct of that action on behalf of his client (see *Home Office* v *Harman* [1982] 1 All ER 532, [1983] 1 AC 280). It must not be used for any 'collateral or ulterior' purpose, to use the words of Jenkins J in *Alterskye* v *Scott* [1948] 1 All ER 469 at 470, approved and adopted by Lord Diplock in *Harman*'s case [1982] 1 All ER 532 at 536, [1983] 1 AC 280 at 302. Thus, for instance, to use a document obtained on discovery in one action as the foundation for a claim in a different and wholly unrelated proceeding would be a clear breach of the implied undertaking (see *Riddick* v *Thames Board Mills Ltd* [1977] 3 All ER 677, [1977] QB 881). It has recently been held by Scott J in *Sybron Corp* v *Barclays Bank plc* [1985] Ch 229, and this must, in my judgment, clearly be right, that *the implied undertaking applies not merely to the documents discovered themselves but also to information derived from those documents whether it be embodied in a copy or stored in the mind.* But the implied undertaking is one which is given to the court ordering discovery and it is clear and is not disputed by the appellants that it can, in appropriate circumstances, be released or modified by the court. (Emphasis added.)

I must not of course pre-empt the Court of Appeal in the 1987 proceedings but as that judgment now stands

and having regard to the allegations and counter-allegation of malice and what I discern to be the intensity with which these two proceedings are being conducted I would not be comfortable in relying on the implied undertaking, which it is conceded exists, that some information gleaned from these documents and *stored in the mind* would not be used unwittingly in the conduct of the 1987 proceedings.

Outstanding items under the summons for directions

(a) Better further and better particulars under para 7 of defence.

Under the sub-heading 'The 1988 proceedings' I have set out in full the further and better particulars requested for by Norman Wright and the 'answers' furnished by OCBC. OCBC refuse to give any better particulars than those given, contending that their case has been adequately pleaded.

Mr Milmo argues that the particulars furnished by OCBC under paras (a)(i), (ii) and (iii) contain a number of negative pregnants or hidden assertions and since the burden of proof in relation to a plea of justification is upon OCBC, OCBC must state its case with precision.

Mr Gray submits that so far as OCBC are concerned there was no breach of confidence. He argued that there are several possibilities. It would be futile to speculate. However, his principal submission was that paras (a)(i), (ii) and (iii) were preliminary averments and resisted Norman Wright's application on the same grounds and for the same reasons as on the issue of discovery. Moreover the particulars sought are in reality in the nature of interrogatories. This was not a legitimate use of particulars.

I agree with Mr Gray. Not only is the request for the better particulars couched in the nature of interrogatories but they cover the same ground as would have been covered by the particular classes of documents of which Norman Wright wanted discovery. Refusal of the discovery requested must also result in the refusal for the better, further and better particulars.

The nub of the plea of justification as I have found is not in paras (a)(i), (ii) and (iii) but in para (b).

As for the further and better particulars of para (c), clearly what Norman Wright is requesting for is for the evidence of inconvenience, embarrassment and distress. It is well settled that the court will not order particulars of evidence.

(b) The interrogatories.

The interrogatories of Norman Wright for answer by OCBC are the following:

(1) Did not the second defendant company (OCBC) draft or cause to be drafted the terms of the apology set out in para 4 of the statement of claim herein?

(2) Did not the second defendant company (OCBC) on 4 December 1987, or on some other and what date, demand of the first defendants (*Business Times*) that they publish in *Business Times* the said apology in exactly the term drafted?

(3) Did not the second defendant company (OCBC) on 4 December 1987, or on some other date, inform the first defendants (*Business Times*) that it would abandon its claim for damages against the first defendants (*Business Times*) if the said apology was published in *Business Times*?

(4) Did not the second defendant company (OCBC) by its servants or agents, know on 5 December that the first defendants (*Business Times*) did not prior to 5 December 1987 carry out any inquiry into the truth of the assertions contained in the said apology?

(5) Did not the second defendant company (OCBC) by its servants or agents, know on 5 December 1987 that the first defendants (*Business Times*) prior to 5 December 1987 did not communicate with the plaintiff about the said apology?

Mr Milmo conceded that these interrogatories were drafted before discovery and that since discovery Norman Wright has sufficient information on interrogatories (2) and (3). He would only press for interrogatories (1), (4) and (5). He submitted that interrogatories (4) and (5) were directed to one of the particulars of express malice given by Norman Wright in his reply which reads:

> As the second defendants (OCBC) well knew *Business Times* at no time had carried out any inquiry into the truth of the assertions contained in the words complained of, nor prior to their publication communicated or consulted with the plaintiff (Norman Wright).

It was submitted that the answers to these interrogatories would shorten the case and limit the number of witnesses to be called.

Mr Gray submitted that if Norman Wright no longer required interrogatories (2) and (3) to be answered, then interrogatory (1) should also not be required to be answered as from the disclosed documents it was clear that the answer was in the affirmative. He was prepared on instructions to make this admission and did so. On this basis Mr Milmo agreed not to press for interrogatory (1).

Regarding interrogatories (4) and (5), Mr Gray submitted that Norman Wright assumes that *Business Times* did not carry out any inquiry and it would therefore be embarrassing for OCBC to have to answer them. I see no assumption on the part of Norman Wright or any embarrassment to OCBC to have to answer these two interrogatories which are directed to the knowledge

of OCBC through its servants or agents. I am of the view that they are proper interrogatories.

(c) Direction for hearing.

A direction that the 1988 proceedings be listed for hearing before the same judge hearing the 1987 proceedings and be heard immediately after the 1987 proceedings by consent of both counsel was not pursued for the time being.

Conclusion

For the reasons I have given in this judgment I will allow the second defendants' (OCBC's) appeal and set aside the assistant registrar's order for discovery made on 4 October 1989.

I disallow the plaintiff's (Norman Wright's) application for better further and better particulars of para 7 of the second defendants' (OCBC) defence.

I allow interrogatories (4) and (5) to be delivered for answer by the second defendants (OCBC) through any of its officers or directors.

Finally I award the costs of the appeal to the second defendants (OCBC). There will be no order for costs on the application for further and better particulars and on the interrogatories.

Appeal allowed.

Solicitors: *Shook Lin & Bok; Arthur Loke and Partners.*

Reported by *Rosalind Tan*

Glory Realty Co Pte Ltd v Datuk Wong Chik Lim

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 636 OF 1989
LAI KEW CHAI J
10 NOVEMBER 1990

Land Law — Agreement for sale and purchase of property — Deposit paid by purchaser to purchaser's solicitors as stakeholders — Purchaser's solicitors adjudged bankrupt and unable to pay out deposit — Whether deposit recoverable from purchaser

The plaintiffs agreed to sell and the defendant agreed to purchase a flat under an agreement for sale. It was a term of the agreement that 10% of the balance of the purchase price, on completion of the sale and purchase of the flat, shall be paid to the purchaser's solicitors as stakeholders, and of this 10%, 5% shall be paid to the vendor within seven days of the receipt by the purchaser or his solicitors of the certificate of fitness for occupation. In this action, the plaintiffs claim the 5% of the purchase price which was not paid by the purchaser's former solicitors, whose sole proprietor was adjudged bankrupt. The issue before the court was whether the vendor (plaintiffs) was entitled to claim the unpaid deposit sum from the purchaser (defendant).

Held, dismissing the claim:
The loss must fall on the plaintiffs. By cl 3(1)(i), they had agreed that the payment of the 5% in question be made over to the solicitors as stakeholders. As stakeholders, those solicitors had become trustees for both the plaintiffs and defendant. The defendant had duly paid the last 5% of the purchase price in accordance with the terms of the agreement. He is no longer obliged to perform any other part of the agreement. The plaintiffs have recourse only against their trustees, the solicitors.

[*Editorial Note:* The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 120 of 1990.]

Cases referred to
1 *Skinner* v *Trustee of Property of Reed* [1967] 2 All ER 1286 (folld)
2 *Burt* v *Claude Cousins & Co Ltd* [1971] 2 QB 426 (folld)
3 *Sorrell* v *Finch* [1977] AC 728 (folld)

S Rai for the plaintiffs.
Chan Eng Thai for the defendant.

Cur Adv Vult

Lai Kew Chai J: This originating summons is concerned with the question as to the rights and liabilities of a developer/vendor and a purchaser of a residential property (who sold and purchased under the prescribed agreement for sale) in connection with the deposit of 5% of the purchase price paid over to the purchaser's solicitor who, by reason of bankruptcy, had become unable to pay out the 5% deposit to the vendor when due. In these proceedings the plaintiffs are claiming to be entitled to the sum of $73,557.07 being the sum due from the defendant, which sum represented 5% of the purchase price held by the defendant's former solicitors